# RECENT IMPORTANT DECISIONS

ADMIRALTY—LIMITATION OF LIABILITY—PRACTICE.—The plaintiff sued at law in a state court on account of injuries received on shipboard, and had verdict and judgment in excess of the value of the ship. The benefit of the federal "Limited Liability Act" (R. S. 4283, etc.) was not claimed by special plea or in the answer, but the court was requested to instruct the jury that the verdict could not exceed the value of the vessel. This request was declined. The judgment was affirmed on error by the Supreme Court of the United States. The Supreme Court held that in a state court, where there is only one possible claimant and one owner, the protection of the statute may be obtained by a proper pleading, but where it is not set up or claimed in the answer it cannot be first presented upon request for a charge to the jury. *Carlisle Packing Co. v. Sandanger,* Adv. Op., 1921-22, p. 564.

In the well-known case of *Craig v. Continental Ins. Co.,* 26 Fed. 798, 141 U. S. 640, an action for loss of life on Lake Huron, the benefit of the statute was given the ship owner under a plea of the general issue alone in the United States Circuit Court at Detroit, and the plea was simply the general issue in accordance with Michigan practice. When it appeared in the course of the trial that the boat on which the loss of life occurred had been a total loss, without fault or privity on the part of the owner, Judge Brown (subsequently Mr. Justice Brown of the Supreme Court) instructed the jury that the Limited Liability Act precluded any recovery by the plaintiff and that the verdict must be in favor of the defendant. This was affirmed by the Supreme Court. This case indicates a modification of the older ruling. There can be no doubt that the statute is as complete a defense in state courts as it is in admiralty, but it must now be specially pleaded.

APPEAL—NO RIGHT OF APPEAL EXISTS UNLESS AUTHORIZED BY STATUTE WHICH CREATES A NEW RIGHT.—A state statute gave an action before a state board to persons convicted and imprisoned for crimes of which they were innocent, a right of appeal from the board's decision to the circuit court being provided. Plaintiff in such an action appealed from the circuit court's decision to the supreme court. *Held,* where a new right is created, and a remedy prescribed, the prescribed remedy is exclusive, and the right of appeal does not exist unless given by statute, hence the appeal did not lie. *In re Long* (Wis., 1922), 187 N. W. 167.

The general doctrine is that laid down by the court, viz., that an appeal lies only when authorized by statute, no such right existing at common law. While statutes granting or regulating appeals are remedial, and should therefore be liberally construed, yet it is a well-settled rule in most jurisdictions that where a tribunal exercises a special, limited jurisdiction conferred by

statute, and in which the procedure is not according to common law, no appeal lies from its action unless expressly provided for. *Sullivan v. Haug,* 82 Mich. 548; *Kramer v. Cleveland & Pittsburgh R. Co.,* 5 Oh. St. 125 (*140); *Miles City v. Drum* (Mont., 1921), 199 Pac. 719; *In re Muskogee Gas & Electric Co.* (Okla., 1921), 201 Pac. 358; *Thomas v. Elliott,* 215 Mo. 598. Because of such rule, where a statute confers a right of appeal in certain named cases it impliedly negatives the existence of the right in those not named, and it would seem that the statute in the principal case not having provided for an appeal from the circuit court, none was intended. The argument of the dissenting opinion was based on an interpretation and application of the general statutes relating to appeals, it being contended that when this case reached the circuit court it was then within the general jurisdiction of that court and was no longer before a special tribunal. On that point see *Naylor v. Naylor.* 60 Tex. Civ. App. 606, holding that where a special and exclusive authority is conferred on a court of general jurisdiction, and no appeal from its action is provided, the decision of such court is final and no appeal lies therefrom. See also *French v. Lighty,* 9 Ind. 452 (*475), and *Allen v. Hostetter,* 16 Ind. 15, where it was held that general statutes upon the subject of appeal do not embrace proceedings under special acts where the latter do not include a provision authorizing an appeal. The decision in the principal case seems to be in accord with the general trend of previous decisions in that state. See *Gillan v. Board of Regents,* 88 Wis. 7; *State ex rel. Cook v. Houser,* 122 Wis. 534; *Clancy v. Board of Fire and Police Comrs. of Milwaukee,* 150 Wis. 630.

BAIL—FORFEITURE EXCUSED BY IMPRISONMENT IN ANOTHER STATE.—Defendant was accused of carrying concealed weapons and bound over to the district court. His wife borrowed and deposited in court $1,400 as bail for his appearance at the November term, but when his case was called defendant was serving a life sentence in a prison in an adjoining state. *Held,* the court erred in denying a motion to undo the forfeiture of his bail. *State v. Williams* (N. D., 1922), 189 N. W. 625.

It was stated in the case of *Taylor v. Taintor,* 83 U. S. 366, that in order to exonerate the bail the performance of the condition thereof must be rendered impossible by an act of God, an act of the obligee, or an act of the law. An arrest in another jurisdiction for a separate and distinct offense is generally held not to be such an act of the law as will operate to discharge the sureties on a bail bond. *Taylor v. Taintor, supra; U. S. v. Marrin,* 170 Fed. 476. For a full citation of authorities, see notes to *State v. Funk,* 20 N. D. 145, Ann. Cas. 1912C, 748, 30 L. R. A. (N. S.) 211; *Hargis v. Begley* (Ky.), 23 L. R. A. (N. S.) 136. The reason of the rule is that the performance of the contract has not been prevented by the act of the state which is the obligee and with reference to whose laws the contract was entered into. As pointed out by Justice Swayne in *Taylor v. Taintor, supra,* "There is a distinction between the act of the law proper and the act of the obligor, which exposes him to the control and action of the law." To counsel's insistence on this rule Judge Robinson, in the principal case, answered